

## Department of Veterans Affairs

## §41.19

the General Accounting Office, at the completion of the audit.

(Authority: Pub. L. 98-502)

### §41.16 Audit costs.

The cost of audits made in accordance with the provisions of these regulations are allowable charges to Federal assistance programs.

(a) The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A-87, "Cost principles for State and local governments."

(b) Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

(Authority: Pub. L. 98-502)

### §41.17 Sanctions.

The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with these regulations. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

(a) Withholding a percentage of assistance payments until the audit is completed satisfactorily,

(b) Withholding or disallowing overhead costs, and

(c) Suspending the Federal assistance agreement until the audit is made.

(Authority: Pub. L. 98-502)

### §41.18 Auditor selection.

In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more eco-

nomical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

(Authority: Pub. L. 98-502)

### §41.19 Small and minority audit firms.

Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of these regulations. Recipients of Federal assistance shall take the following steps to further this goal:

(a) Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

(b) Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

(c) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

(d) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

(e) Encourage contracting with consortiums of small audit firms as described in paragraph (a) of this section when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

(f) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of

## § 41.20

small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

(Authority: Pub. L. 98-502)

### § 41.20 Reporting.

Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of these regulations. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with these regulations.

(Authority: Pub. L. 98-502)

## PART 42—STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

- 42.1 Basis and purpose.
- 42.2 Definitions.
- 42.3 Basis for civil penalties and assessments.
- 42.4 Investigation.
- 42.5 Review by the reviewing official.
- 42.6 Prerequisites for issuing a complaint.
- 42.7 Complaint.
- 42.8 Service of complaint.
- 42.9 Answer.
- 42.10 Default upon failure to file an answer.
- 42.11 Referral of complaint and answer to the Administrative Law Judge (ALJ).
- 42.12 Notice of hearing.
- 42.13 Parties to the hearing.
- 42.14 Separation of functions.
- 42.15 Ex parte contacts.
- 42.16 Disqualification of reviewing official or ALJ.
- 42.17 Rights of parties.
- 42.18 Authority of the ALJ.
- 42.19 Prehearing conferences.
- 42.20 Disclosure of documents.
- 42.21 Discovery.
- 42.22 Exchange of witness lists, statements, and exhibits.
- 42.23 Subpoenas for attendance at hearing.
- 42.24 Protective order.
- 42.25 Fees.
- 42.26 Form, filing and service of papers.
- 42.27 Computation of time.
- 42.28 Motions.
- 42.29 Sanctions.
- 42.30 The hearing and burden of proof.
- 42.31 Determining the amount of penalties and assessments.
- 42.32 Location of hearing.
- 42.33 Witnesses.
- 42.34 Evidence.

## 38 CFR Ch. I (7-1-04 Edition)

- 42.35 The record.
- 42.36 Post-hearing briefs.
- 42.37 Initial decision.
- 42.38 Reconsideration of initial decision.
- 42.39 Appeal to the Secretary of Veterans Affairs.
- 42.40 Stays ordered by the Department of Justice.
- 42.41 Stay pending appeal.
- 42.42 Judicial review.
- 42.43 Collection of civil penalties and assessments.
- 42.44 Right to administrative offset.
- 42.45 Deposit in Treasury of United States.
- 42.46 Compromise and settlement.
- 42.47 Limitations.

AUTHORITY: Pub. L. 99-509, secs. 6101-6104, 100 Stat. 1874, to be codified at 31 U.S.C. 3801-3812.

SOURCE: 53 FR 16710, May 11, 1988, unless otherwise noted.

### § 42.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99-509, 6101-6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801-3812. Section 3809 of title 31 U.S.C., requires each authority head, such as the Secretary of Veterans Affairs, to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part:

(1) Establishes and provides the only administrative procedures and actions for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

### § 42.2 Definitions.

For the purposes of this part, the following definitions apply:

*ALJ* means an Administrative Law Judge in the Department of Veterans Affairs pursuant to 5 U.S.C. 3105 or detailed to the Department of Veterans Affairs pursuant to 5 U.S.C. 3344.

*Benefit* means, in the context of statement, anything of value, including, but not limited to, any advantage, preference, privilege, license, permit,